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The Human Rights Monitor

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Executive Director's Desk



Amber D. Gooding

In the first issue of the *Human Rights Monitor* I solicited feedback from our readership. Many of you have responded to my request, and I'd like to thank you for your comments and words of support. Your outpouring of positive comments are very much appreciated and needed. You help us to gauge the effectiveness of our efforts. Whether it's concerning a conference, news article or some

other component of our program, I welcome your input.

Over the last several months, the THRC has undergone changes in its staff and board of commissioners. I'm please to announce three new appointments to our board; Gregory E. Lewis of Columbia, Reverend Samuel Kyles and Reverend Robert E. Jones, both of Memphis. We are pleased and honored to have these men of distinction added to our governing body.

In April, the THRC participated in three very successful fair housing conferences (held in Knoxville, Nashville and Memphis). All three were very well attended, and a lot of useful information was imparted to the participants.

In September, look forward

to attending one of our disability conferences. We will host conferences in Chattanooga, Nashville, Memphis, Jackson and Johnson City. The conferences will focus on the housing needs of individuals with disabilities.

In October, the THRC and the Knoxville Urban League will host two fair housing forums. The forums will focus on the housing needs of minorities in Knoxville and its surrounding counties.

You may contact Cynthia Howard at (615) 253-1608 or consult our website for conference dates and registration information.

In closing, thank you for your continued support, and I look forward to hearing from you soon.

General Counsel's Corner



Scott J. Mayer

Can an employer fire an employee because of his or her disability? No, such conduct would clearly violate both the federal Americans with Disabilities Act (ADA) and the Tennes-

see Handicap Act. But what if that same employee has performance problems, engages in misconduct, or frequently misses work? In such situations, the employer can terminate the employee even though he or she has a disability.

Disability law, like most discrimination law, is about inaccurate, stigmatizing stereotypes and is premised on the belief that an employee (or prospective employee) who can perform a job should be allowed to perform that job without regard to their disability. If an employee cannot perform the

job, an employer is not obligated to hire or retain that employee. For instance, an employer who refuses to hire a job applicant with a history of alcoholism because it fears that person might miss too much time from work has made a generalized assumption and, in doing so, has likely violated both state and federal law. If that applicant is actually hired, and subsequently does miss an inordinate number of workdays or drives a company car while intoxicated, that same employee can be terminated irrespective of any claim of disability protec-

tion. In other words, it is the status of being disabled that is protected, and not any resultant conduct or misconduct, even if that conduct is a manifestation of the disabling condition. This important status/conduct distinction was the focus of *Raytheon v. Hernandez*, a recent federal Supreme Court case involving the ADA.

In the case, an employee tested positive for cocaine and admitted that his behavior violated the employer's workplace conduct rules. As such, he was forced to resign, and this was noted in his personnel file. Some two years later, he applied to be rehired, stating on his application that he had previously been employed. The applicant also attached information detailing his recovery from drug addiction. The employer reviewed and rejected the former employee's application due to an employer policy that prevented the rehire of former employees terminated for workplace misconduct. Notably, the person reviewing the application claimed not to know that the applicant was a former drug addict when she made the decision not to rehire him. The applicant then filed suit, alleging that the employer had improperly taken his drug addiction into consideration in denying him employment.

A unanimous U.S. Supreme Court determined that

Raytheon's no-rehire policy was a quintessential legitimate, nondiscriminatory reason for refusing to rehire Mr. Hernandez, who was terminated for violating workplace conduct rules. If Raytheon had in fact applied a neutral, generally applicable no-rehire policy in rejecting the application, its decision not to rehire could in no way be said to have been motivated by the applicant's disability. Put simply, the court reiterated that the applicant's status of being disabled was protected, but his misconduct—the act of working while under the influence of cocaine—was not.

The Tennessee Handicap Act (THA), which this Agency enforces, prohibits an employer from making employment decisions on the basis of an individual's physical, mental, or visual handicap, unless that handicap prevents or impairs the individual's ability to perform the job. Tennessee law defines handicap as a physical or mental impairment which substantially limits one or more of a person's major life activities. As is true with the

federal ADA, state law covers individuals who have a record of having such an impairment or who are regarded as having such an impairment. The THA, however, does not require an employer to reasonably accommodate the disability of a current or prospective employee.

There is no list of impairments that qualify as disabilities; that determination must be made on a case-by-case basis. To successfully establish a disability, an

individual must show that they have a permanent or long-term physical impairment which prevents or severely restricts them from doing activities that are of central importance to most people's daily lives. A doctor's note or diagnosis of an impairment, standing alone, is insufficient to establish a disability. Similarly, receiving a "disability rating" for purposes of worker's compensation or taking "short-term disability" leave or benefits does not establish a disability. Because the same impairment can affect individuals differently, a condition that constitutes a disability for one person may not be a disability for another. Temporary conditions do not qualify

as disabilities. A person with a broken leg would clearly not have a disability but rather a temporary condition, even if it dramatically impaired that individual's daily activities. By contrast, a person with abnormally brittle bones might have a disability if that condition severely restricted that person's important daily activities.

Correctable conditions are also not covered as disabilities. For example, poor vision corrected by glasses or lenses; hearing loss corrected by hearing aids; high blood pressure controlled by medication; and depression controlled by antidepressants do not qualify as disabilities. An employer would nonetheless do well to avoid discriminating against individuals with corrected conditions, as doing so exposes the employer to the charge that it possibly "regarded" the employee as disabled, even if he or she was not.

Employees who believe that they are the victims of disability discrimination may file a complaint with the Tennessee Human Rights Commission. Administrative complaints under the Tennessee Human Rights Act/Tennessee Handicap Act must be filed with the Commission within 180 days of the alleged discriminatory act.

"Disability law... is about inaccurate, stigmatizing stereotypes and is premised on the belief that an employee (or prospective employee) who can perform a job should be allowed to perform that job without regard to their disability."

Mediation Highlights— Over \$44, 000 Awarded In Three Mediation Agreements

All cases filed and mediated with the THRC are confidential unless otherwise stipulated in the mediation agreement. Below are highlights of some of the mediations conducted in the last six months:

- A charge was filed against a Knoxville employer alleging sexual harassment in the workplace. The female complainant alleged that on numerous occasions she had sexual comments directed towards her by male coworkers. Although the employer took action when she complained to management, the complainant

was not satisfied. The parties agreed to mediate the case. The complainant was awarded \$27, 000, and the employer agreed to provide favorable job references for the complainant.

- A charge was filed against a Nashville employer alleging sex discrimination. The female complainant alleged that she had reported her manager for sexual harassment, which resulted in her being laid off. The employer asserted that the complainant was laid off because of diminished business and the company's subsequent downsizing. Following mediation,

the complainant was awarded over \$15,000.

- A charge was filed against a Middle Tennessee employer alleging race discrimination. The complainant alleged that she was terminated from her job because of her race. She alleged that her manager made racial comments to her and that her evaluations were more stringent than those of her white co-workers. As part of the mediation agreement, the complainant was re-hired at her previous salary and she received \$1,500, in back pay.

Francis Guess Honored for Thirty Years of Dedicated Service



Francis Guess is presented with a proclamation signed by Governor Bredesen, recognizing thirty years of dedicated services as a commissioner on the board of THRC. Left to right: Amber Gooding, Executive Director THRC; Dave Cooley, Deputy to the Governor; Francis Guess, Former Chairperson and Commissioner THRC and Spencer Wiggins, Chairman, Board of Commissioners THRC.

Article by Cynthia Howard

Photo by Patrice Darby

On March 25, 2004, Loews Vanderbilt Hotel and the Tennessee Human Rights Commission held a reception to honor Commissioner Francis Guess for thirty-years of dedicated service to the commission. Several hundred people gathered at the Nashville City Club to celebrate Guess' many contributions.

Guess was initially appointed to the board by Governor Winfield Dunn in 1974. Although commissioners are appointed to a six-year term, each successive governor, Gov. (Lamar) Alexander, Gov. (Ned) McWherter and Gov. (Don) Sunquist asked Guess to remain on the board.

Guess was asked to stay for awhile to assist the commission as it went through the transition to a new executive director. Guess, confident that the commission was in good hands, stepped down from the board of the 37 year-old agency in March. When asked why he stayed so long, he simply stated, "Because governors kept asking me to."

Guess serves as executive vice president of The Danner Company, a Nashville, Tennessee based investment and management firm with interests world-wide in a variety of business ventures. Ray Danner, the founder and retired chairman of Shoney's Inc., heads The Danner Company.

Among his various roles at The Danner Company, Guess is the firm's principal officer in Charge of external affairs. In this capacity, he provides management and marketing advice, as well as serving as the company's chief spokesperson.

As a private investment, Guess owns

"He has been a beacon of hope for those individuals seeking equal protection under the law. . ."

and operates Helicopter Corporation of America (HELICORP). This Nashville based firm is a Bell, America Eurocopter, and McDonnell Douglas certified service center. In addition to helicopter maintenance, the company offers an extensive parts inventory, brokers helicopters internationally, and offers a southeastern United States charter.

Guess, an activist and philanthropist, continues to serve on other boards and

commissions. He serves on the board of trustees of the American Institute for Managing Diversity in Atlanta and with United Way of Metropolitan Nashville; chairs the Board of the Nashville Minority Business Development Loan Fund; and sits on the boards of the Nashville Convention and Visitors Bureau, Nashville City Club (as the immediate past president); and the 'operating board' of the Tennessee Repertory Theatre.

"He has accomplished a great deal in the area of advancing civil rights for the citizens of our state," said Spencer Wiggins, chairman of the Tennessee Human Rights Commission. "Francis has and will continue to further civil rights regardless of what capacity he serves. He has been a beacon of hope for those individuals seeking equal protection under the law, and to borrow a phrase from Dr. Martin Luther King, Jr., 'he is a drum major for justice and equality.'"

"I can't think of too many people who've made the sacrifice he has," said Amber Gooding. "Francis has a passion and a mission that's a part of him."

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THE HUMAN RIGHTS MONITOR

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If you would like more information on your rights, the federal and state laws that protect you or would simply like to have a member of our staff speak to your group or organization, contact Cynthia Howard at 615-253-1608.

We hope you have enjoyed the Human Rights Monitor. You can receive future copies of our e-newsletter by simply forwarding your email address to:

Cynthia.howard@state.tn.us
Visit Our Website

www.state.tn.us/humanrights

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We are committed to serving the citizens of Tennessee.

TENNESSEE HUMAN RIGHTS COMMISSION

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Staff Highlights

by Cynthia Howard



Sherree Hall

May marks the end of Sherree Hall's time with the THRC where she served as the agency's Deputy Director from May 1998 to May 2004. Hall was instrumental in helping to decrease the agency's once sizeable backlog of employment cases and refining the complaint intake process, which helped to decrease the overall processing time of employment cases.

When asked about her leaving, she stated simply, "Although I hate to leave, I welcome the new challenges ahead."

In her new role, Hall will serve as the Director of EEO & Affirmative Action with the Department of Transportation in the Civil Rights Division.

Frank Guzman Joined the staff of THRC in April. He will



Frank Guzman

be taking over the role of Intake Review Officer. In this role, his primary duties will include reviewing and tracking employment complaints that are filed with the agency.

Guzman obtained a B.S. Degree from Belmont University in Criminal Justice.



John Shacklett

John Shacklett joined the staff of THRC in May. Shacklett will be assisting with the THRC's education and outreach efforts. Shacklett, a manager retired from Bellsouth, brings with him a plethora of

skills in this area. Shacklett earned a Bachelor of Engineering from Vanderbilt University.



Antonio Adams

In June, Antonio Adams was welcomed as the Deputy Director of the THRC. Adams most recently served with the Department of Workforce and Labor.

He has extensive work experience in labor and employment relations through the Dept. of Labor and the Tennessee Valley Authority.

Adams holds a Bachelor of Science degree in Sociology from East Tennessee State University, a Master of Science (with a focus on industrial relations) from Middle Tennessee State University, and a Juris Doctorate from Thomas Cooley Law School.